

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 21 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAY B.

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY and
ISABELLA B.,

Appellees.

2 CA-JV 2009-0077

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J-179437

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

The Hopkins Law Office, P.C.

By Cedric Martin Hopkins

Tucson

Attorney for Appellant

Terry Goddard, Arizona Attorney General

By Eric Devany

Mesa

Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Jay B. appeals the juvenile court’s July 21, 2009, order terminating his parental rights to three-year-old Isabella B. on the ground that he failed to remedy the circumstances causing her to remain in court-ordered, out-of-home care for fifteen months or longer. *See* A.R.S. § 8-533(B)(8)(c). On appeal, Jay argues the court failed to find, and the evidence failed to prove, that there was a substantial likelihood he would not be capable of exercising proper and effective parental care and control in the near future, as required for termination on this ground.¹ *See id.* For the following reasons, we affirm.

¶2 We view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining an order terminating parental rights. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 13, 53 P.3d 203, 207 (App. 2002). So viewed, the evidence established that Isabella was born prematurely in July 2006 and remained in the hospital for ten days after her birth. Hospital staff contacted Child Protective Services (CPS) after observing that Jay and Isabella’s mother, Christianna R., were unable to follow instructions about basic parenting skills, such as feeding, changing, and holding their child, and because Jay twice had threatened to remove Isabella from the hospital against medical advice.² After Isabella was released from the hospital, she and Christianna stayed with

¹Jay also challenged the juvenile court’s order on the ground that it did not include a statement of the court’s jurisdiction. *See* A.R.S. § 8-538(A) (termination order must include “finding[] pertaining to . . . the court’s jurisdiction”). Because the court has amended its order to include the required statement, this issue has been rendered moot.

²Christianna consented to Isabella’s adoption. She is not a party in this appeal.

Christianna's parents for six days before returning home. During that time, CPS arranged for in-home services for Jay and Christianna.

¶3 CPS later took custody of Isabella on September 1, 2006, while Christianna was hospitalized for treatment of an infection, and the Arizona Department of Economic Security (ADES) filed a dependency petition. Although Christianna had agreed to a safety plan that included Isabella's temporary placement with her maternal grandparents, Jay attempted to flee the hospital with Isabella and had to be stopped by hospital security and police. Both parents contested dependency but waived their rights to a hearing, and the juvenile court found Isabella a dependent minor in January 2007.

¶4 In late September 2006, Isabella was returned to placement with Jay and Christianna, but service providers continued to express concerns about the condition of the home and Isabella's care. CPS placed Isabella in foster care in March 2007, after learning the parents were facing eviction and apparently had been allowing their six dogs unsupervised access to eight-month-old Isabella, despite the juvenile court's order that the animals be kept in separate quarters.

¶5 Psychologist Michael German diagnosed Jay with mixed personality disorder with defiant and oppositional features and opined that his defensive outlook and argumentative style were "difficult traits to change." Both before and after Isabella was placed in foster care, Jay's participation with in-home services was limited, and service providers reported he often had been asleep in another room during their visits to the home.

There was also testimony that Jay had participated only in selected services required by his case plan. Although his CPS case plan called for Jay to attend weekly counseling sessions, he scheduled only nine sessions between April 2007 and the fall of 2008 and then stopped attending altogether. Jay and Christianna separated at the end of 2008, and Jay resumed counseling with a different agency in April 2009, after ADES filed its motion to terminate, and he attended sessions on a weekly basis until the termination hearing concluded in July 2009. At the time of termination, Jay's sole source of income was his social security disability payment of less than seven hundred dollars per month. He testified he also had been approved to receive food stamps worth two hundred dollars each month, but had not yet received them.

¶6 After a six-day termination hearing held over the course of three months, the juvenile court expressed its hope that Jay would continue to make progress in therapy. But the court also found that, despite more than two years of services, Jay continued to have difficulty providing for his own needs and was unable to parent a child effectively. The court further found termination would be in Isabella's best interests and terminated Jay's parental rights based on length of time in care pursuant to § 8-533(b)(8)(c).

¶7 On appeal, Jay notes that before terminating a parent's rights pursuant to § 8-533(b)(8)(c), a juvenile court must find "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future" and the court did not do so expressly here. He also contends the court lacked an evidentiary

basis to make such a finding, directing us to the testimony of several witnesses who had commented about progress Jay had made in late 2008 and 2009. But, as ADES argues, evidence also had been presented that, just a few months before the termination hearing began, Jay's "behavior [was] becoming more erratic" and he had threatened to kill himself and Christianna. And social worker Kathryn Seidler, a specialist in attachment and bonding for children under the age of six, testified Jay had "demonstrated a lot of emotional instability and immaturity" during her assessment of Isabella during the summer and fall of 2008 and that more recent events had strengthened her opinion that Jay "d[id] not have the capacity to protect and provide for Isabella."

¶8 The juvenile court is "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings" in a termination proceeding, "and we will affirm a severance order unless it is clearly erroneous." *Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Moreover, we presume the court made every finding necessary to support its judgment, as long as the court's implicit finding is supported by reasonable evidence in the record. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 17, 83 P.3d 43, 50 (App. 2004). Thus, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶9 Although some evidence suggested Jay had made progress in the months just before the termination hearing, it is not this court's role to reweigh the evidence. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005). Reasonable evidence of Jay's recent emotional instability and the continuing therapeutic and financial challenges he faced supported the juvenile court's implicit finding that there was a substantial likelihood Jay would be unable to parent Isabella effectively in the near future. Accordingly, we affirm the termination order.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge